

REMARKS

Claims 29-47 are pending in this application (claims 48-60 having been restricted and withdrawn by the Examiner). Claims 29-47 are amended, withdrawn claims 48-60 are cancelled and new claims 61-73 are added herein.

Claims 29, 61 and 72 are independent.

Claims 29-47 are amended in a non-narrowing manner, solely for clarification and not for purposes of patentability.

The withdrawal of the final rejection and the indication that claims 41 and 47 are now deemed allowable over the applied prior art is noted with appreciation.

Formal drawings, which address the concerns noted in form PTO 948, are submitted herewith.

Claims 29-47 stand rejected, under 35 U.S.C. §101 as directed to non-statutory subject matter. The rejection is respectfully traversed.

As defined in the American Heritage Dictionary (Third Edition), published by Houghton Mifflin Company © 1997, 1993, a **system** is "a group of interacting, interrelated or interdependent elements forming a complex whole" and an **architecture** is "an orderly arrangement of parts; structure". Hence, a system architecture is an orderly arrangement of a group of interacting, interrelated or interdependent elements forming a complex whole, and characterizes patentable subject matter under 35 U.S.C. §101. The phrase "system architecture" is also well understood to those skilled in the art, as evidenced by the hundreds of papers written on matters relating to "system architectures", some of which can, for example, be found at <http://www.itpapers.com/cgi/SubcatIT.pl?scid=79/infapp>, as well as elsewhere on the Web.

However, notwithstanding the impropriety of the rejection, the term "architecture" has been deleted from the claim preamble to avoid any possible need to further prosecute this issue.

Claims 29-47 stand rejected, under 35 U.S.C. §112, second paragraph as indefinite. The rejection is respectfully traversed.

The Examiner indicates that the meaning of the second server limitations recited in claim 29 are unclear.

The basis for the confusion, and thus for the rejection itself, are not understood. The Examiner had not identified any issues regarding how the claim language should be properly construed during the earlier examination of the claims or in the prior Official Actions. Is the Examiner now suggesting that the term "configured" is, for some reason, to be ignored when it comes to the "third clause" and the "fourth clause" of claim 29? If so, one can only ask why that would be?

The second server in claim 29 is configured (i.e. set-up to operate in a particular way, typically by being programmed with the necessary logic) to receive, to transmit, and to still further transmit. This would seem to be quite unambiguous from the claim language. Indeed, it would be difficult to read the language in question to communicate something other than that the second server is configured to receive, to transmit, and to still further transmit.

However, notwithstanding the impropriety of the rejection, claim 29 and some of the other claims have been amended to avoid any possible need to further prosecute this issue.

Claims 29-37 and 42-46 again stand rejected, under 35 U.S.C. §102(b) as anticipated by, and now also stand rejected, under 37 U.S.C. §103(a), as obvious over, PowerTV Inc., White Paper entitled "Applications and Service Infrastructure" (hereinafter "PowerTV"). Claims 38-40, which depend from claim 29, again stand rejected as obvious under 35 U.S.C. §103(a) over PowerTV in view of Condon (U.S. Patent 5,956,714). The rejections are respectfully traversed.

The traversal arguments presented in the substitute Appeal Brief filed on February 12, 2003, are incorporated herein by reference in their entirety.

The rejection of claims 29-37 and 42-56 as anticipated by and obvious over PowerTV is omnibus in nature and accordingly, cannot reasonably be understood.

As has been previously highlighted in traversal arguments (including those presented in the substitute Appeal Brief referenced above), numerous limitations in the claims have been entirely ignored. Since there has been no claim-by-claim analysis (let alone element-by-element analysis) presented in the Official Action, it is not even clear if all the claims have been considered.

Since the applied prior art fails to disclose numerous features and limitations explicitly recited in the claims (as have been previously highlighted in the substitute Appeal Brief referenced above), the rejection must be based on facts within the personal knowledge of the Examiner. Accordingly, the Examiner is respectfully requested to issue an affidavit as to the facts known personally to the Examiner which support the rejection in accordance with 37 CFR 1.104(d)(2).

With regard to paragraph 11 of the Official Action to which this response relates, the term "architecture" should be understood to be defined as stated above.

With respect to paragraph 15, the Examiner's general reference to How Networks Work and How the Internet Works is not considered evidence, since the Examiner has neither applied these references, nor presented any analysis of the claims in view of these references. Hence, it is entirely unclear what relevance the Examiner places in these references.

With regard to paragraph 14 of the Official Action, the Examiner's reference to MPEP §2106IIC is not understood. Claim 32 does not recite an optional limitation but rather an express mandatory limitation that the first product related request is receivable from the one network device and the first product related data is transmittable to the one network device only if the one network device is tuned to one of the multiple broadcast channels. However, the Examiner's attention is directed to the last paragraph of MPEP §2106IIC, which is particularly relevant to the examination of the present application.

Accordingly, the Examiner's assertions set forth in paragraphs 11-15 of the Official Action, to the extent addressed above, are traversed.

With regard to the Examiner's response to arguments set forth in paragraphs 20-24 of the Official Action, the following is offered in reply.

It is first noted that many of the arguments presented in the substitute Appeal Brief referenced above have not been addressed by the Examiner.

With regard to claim 42, the Examiner asserts that his PC is and virtually all PC's are "configured to" do the claimed task, although the Examiner acknowledges that additional components may need to be added to the particular computer. Based upon this rationale, the Examiner concludes (as understood) that notwithstanding the fact that his PC does not have these additional components, it "remains "configured to" perform

virtually any task a computer may perform". This is a very odd position, since it would logically lead to the conclusion that notwithstanding the significant efforts which are now being undertaken to develop the logic for PC's to function in new and unobvious ways, a computer capable of so functioning is never patentable. It is respectfully submitted that the Examiner's position flies in the face of numerous decisions of the Supreme Court and Federal Circuit.

The Examiner goes on to assert that "the computers found on the Internet are also "configured to" perform all the tasks found in claim 42". However, the Examiner offers no support for the asserted conclusion. The undersigned has a computer which is sometimes connected to the Internet, but which is certainly not configured (i.e. set up to operate) to perform in a manner which meets the limitations of claim 42. Nor is any other computer of which the undersigned is aware "configured to perform all the tasks found in claim 42". That is because they lack the necessary logic. Although the Examiner asserts that he is not ignoring any claim limitations, the Examiner fails to present any evidence which supports this assertion.

The analogy presented by the Examiner to an automobile chassis is incorrect. The chassis is not "configured to transport people" until at least some additional elements, such as a seat, engine and wheels are added. Likewise, a conventional PC must be "configured to perform the claimed tasks". Indeed, using the Examiner's own asserted definition (i.e. "to set up for operation, especially in a particular way") the computer must be programmed with the necessary logic just as the chassis needs to be set up for operation (i.e. in the Examiner's example by having seats, an engine and wheels installed) in order to be configured to transport people.

With regard to paragraph 23 of the Official Action, the Examiner asserts that "it is the Examiner's position that the first product related request is receivable and the first product related data is transmittable "from virtually any other computer". However, if this were indeed true, the Examiner would be able to apply art which discloses the recited limitations. Yet, to date the Examiner has done nothing more than assert conclusions for which no reasonable supporting evidence is provided.

The Examiner refers to a phrase being "disjunctive" in claim 32. However, contrary to the Examiner's assertion there is no disjunctive phraseology in claim 32.

Rather, claim 32 recites only positive limitations which are that the first product related request is receivable from and the first product related data is transmittable to the one network device only if the one network device is tuned to one of multiple broadcast channels. There is no alternative recitation in claim 32. Stated another way, to anticipate or make obvious claim 32, the prior art must teach or suggest that a first product related request is receivable from the one network device and the first product related data is transmittable from that same network device only if that network device is tuned to a particular one of multiple broadcast channels. Hence, the extent to which other information is receivable from or transmittable to the one network device, if that device is tuned to another of the multiple broadcast channels, is irrelevant with respect to claim 32.

The Examiner asserts that "in this case, the Examiner elects the "not" tuned to one of the multiple broadcast channels. Therefore the claim is anticipated." However, the Examiner has failed to point to any disclosure or suggestion within the applied prior art of the first product related request being receivable from the one network device and the first product related data being transmittable to the one network device, if that device is not tuned to one of the multiple broadcast channels. Therefore has failed to present any evidence of anticipation or obviousness of claim 32.

Regarding claim 41, the Examiner asserts that information transferred through a server "is stored at that server at least temporarily". The Examiner goes on to assert that the recited second server "could be virtually any server on the Internet".

However, the Examiner fails to identify any transfer of databases or any temporary storage thereof described in the PowerTV disclosure. Furthermore, the claimed databases store very particular product related data and this seems to have been ignored.

The Examiner goes on to assert that "if the user selected a particular program, that choice is their preference. Therefore virtually any product related data selected by a user (via the request) corresponds to a preference of that user".

The Examiner's assertions are not understood. According to claim 41, the stored data which is ultimately transmitted in response to the request, must correspond to a preference of the user. Hence, the preference cannot be based upon the request in

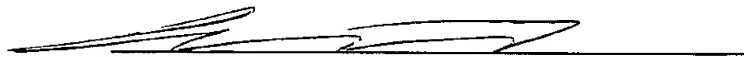
view of the claim 41 limitations. Hence, the limitations of claim 41 have been effectively ignored by the Examiner.

New claims 61-73, which include independent claim 61, on which claims 62-71 depend, and independent claim 72, on which claim 73 depends, recite the invention in a somewhat different manner and distinguish over the applied art for reasons which should be clear from the above. It is perhaps worthwhile to point out that claims 72-73 are written in means plus function format and accordingly must be construed under 35 USC §112, sixth paragraph.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed local telephone number, in order to expedite resolution of any remaining issues and further to expedite passage of the application to issue, if any further comments, questions or suggestions arise in connection with the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 01-2135 and please credit any excess fees to such deposit account.

Respectfully submitted,
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